

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 10,909
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare to reduce his Food Stamps and Supplemental Fuel benefits. The issue is whether the petitioner's shelter expenses have decreased as the Department claims.

FINDINGS OF FACT

1. The petitioner is a single person whose sole source of income is Supplemental Security Income of about \$500.00 per month. He has been a recipient of Food Stamps and Supplemental Fuel benefits for some time.

2. The amount of benefits the petitioner receives is calculated in part by considering the amount of money he must pay for rent and utilities. Until recently, the petitioner reported that his shelter was a seasonal home he rented from his parents in Marlboro for which he pays \$125.00 per month. No utilities are included in that figure. The petitioner must provide and pay for his own wood heat.

3. During a routine review on October 30, 1991, the petitioner mentioned to the departmental worker that in addition to the Marlboro house, he rented a room in a rooming house in Brattleboro for purposes of providing "storage". At

the end of the interview, the petitioner was given a shelter statement form to be filled out by his landlord detailing his rent and utilities.

4. Directly after the interview, the worker called the manager of the Brattleboro rooming house and after speaking with him and discovering through a tape match that the petitioner receives his S.S.I. checks at the Brattleboro address, concluded that the petitioner actually resides in the room in Brattleboro and pays \$50.00 per week which includes all utilities.

5. Using the above figure obtained on the telephone as the petitioner's shelter expense, the worker concluded that the allowed shelter and utility costs went down from \$228.00 at his no-utilities included Marlboro address to \$25.00 at the utilities included Brattleboro room. The lower shelter expense resulted in a decrease of \$61.00 (\$74.00 to \$13.00) in his Food Stamp allotment and \$55.00 (\$70.00 to \$15.00) in his monthly Fuel Assistance benefit. The worker notified the petitioner of this new calculation November 15, 1991 and advised him that the change would take effect December 1, 1991.

6. On December 17, 1991, the petitioner returned the shelter expense statement form which the worker had given him. On that statement (dated November 30, 1991), the petitioner's landlords (his parents) certified that he rents a house and a mobile home from them in Marlboro, VT for

\$125.00 per month excluding utilities and that he heats with wood. At that time the worker told the petitioner what had already gone out in the notice: That it was rejecting that statement as a true reflection of the petitioner's residence and was relying on the Brattleboro landlord's oral statement. The petitioner appealed that determination.

7. Approximately three weeks after the appeal was filed, and shortly before the fair hearing was originally scheduled,¹ the Department solicited a written statement of the petitioner's shelter expense from the Brattleboro landlord. That statement indicated that the petitioner was paying \$50.00 weekly for a room which includes heat, hot water, lights, cooking fuel and rubbish removal.

8. The petitioner has lived on the Marlboro property for about nine years in a two bedroom seasonal home owned by his parents. The home is in a remote area with a somewhat difficult winter access due to a steep hill but which is used by his parents as a summer vacation home. When his parents come to the house, he moves to a bus on the property. The heating system consists of a fireplace in the living room and a wood stove in the kitchen. The petitioner has a telephone in his name at the house and the electric bill is in his name. He spends most of his nights in the Marlboro house.

9. The petitioner, by his own admission, pays rent for a room in Brattleboro as well which he uses regularly for many reasons in addition to storage. He keeps and works

on cars at the rooming house which includes a parking space.

He takes his trash there for pickups and disposal. He sometimes eats and sleeps there when it is convenient for him, such as when he is in town late for social events or when the weather is too cold or the roads impassable up the Marlboro mountain road. He also uses the rooming house as an address for deliveries, such as UPS. He keeps some canned goods there to eat in the rooming house kitchen when he is there and uses the hot water for showers and clean up.

(There is apparently no hot water in the Marlboro home). He also tapes shows from the rooming house's cable TV for watching in the Marlboro house. At the rooming house, the petitioner has furniture for sleeping in his own room and full access to kitchen, living room, and bathroom facilities.

10. Based on the above, it must be concluded that the petitioner pays for and has shelter available to him in two places. Although he considers the Marlboro home his principal residence, the evidence clearly shows that he also spends substantial amounts of time in the Brattleboro rooming house and that he has year-round access to facilities there that are not available to him at the Marlboro house.

ORDER

The Department's decision is affirmed.

REASONS

There is nothing in either the Food Stamps or Fuel

Assistance regulations which addresses a situation in which a person has two residences strictly as a personal preference. The Food Stamp regulations provide a deduction from income for shelter costs to determine the amount of benefits as follows:

. . .

Shelter costs shall include only the following:

- i. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.
- ii. Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

Taxes, assessments and insurance are averaged over the full period for which they are incurred. Clients may request that they be averaged over the certification period in which the non-delinquent payment is due, or computed against the individual month in which the non-delinquent payment is due, providing such option does not result in any duplication of deductions. No deduction shall be allowed for delinquent payments; i.e., payment of taxes, assessments, etc., which were initially due prior to the current certification period.

- iii. The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.
- iv. The shelter costs for the home if temporarily not occupied by the household because of employment or training away from the home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if

any, must not be claiming the shelter costs for Food Stamp purposes; and the home must not be leased or rented during the absence of the household.

- v. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

The fuel regulations provide assistance to households responsible "for paying their own heat or making undesignated payments for home heat in the form of rent".

W.A.M. § 2900. The regulations provide as follows:

. . .

Their income shall be adjusted as follows:

A housing cost income adjustment will be applied to all eligible fuel assistance households except roomer households. Any amount by which an eligible household's actual monthly home rental or ownership cost liability exceeds \$150 shall be deducted from the household income.

The ownership cost or rental liability shall be as verified in the existing record for households currently participating in the ANFC or Food Stamp programs, and for all others shall be prorated equally among all households sharing a living unit regardless of the actual distribution of responsibility for the costs.

Housing costs may include housing rental, lot rental, mortgage or other continuing charges leading to the ownership of the housing (such as loan repayments for the purchase of a mobile home), taxes, and insurance on the structure.

Monthly costs or liability shall be computed as the monthly charge, or quarterly cost divided by 3, semi-annual cost divided by 6, annual cost divided by 12, etc., based upon the most recent billing or assessment available,

Verification may be required when information provided is questionable.

This is an unusual case and one of first impression before the Board. That is undoubtedly because there are not many persons in this income category who can afford to maintain two residences for any reason. Although the petitioner clearly views his mountain home as his principal residence, he clearly has shelter with all utilities in a nearby town at a cheaper cost which he could live in full-time if he desired and which he uses for a dwelling regularly when it is convenient for him to do so.

Since the petitioner is not maintaining the rooming house for educational or employment purposes, the fact that he does not view it as his principal place of dwelling does not seem relevant to the inquiry here. When, as in this case, a recipient pays for shelter in two places which are relatively close to each other solely for his own convenience or personal preference, the Department is justified in deducting the shelter cost of the least expensive dwelling as long as it provides all the basic necessities of decent habitable housing. Such a view is consistent with the purpose obvious in the Food Stamps and Fuel Assistance regulations above allowing persons a reasonable deduction (within a capped range) for the essentials of life (shelter, medical expenses, etc.) before determining what share is left of their income for purchasing food and/or fuel.

As the Department's decision to use the shelter costs

of the rooming house is a reasonable one in this circumstance and in accord with its regulations, the decision should be upheld. It should be noted however, that fairness may have been better served in this matter if the Department had obtained a written statement from the Brattleboro landlord and have allowed the petitioner to see it and comment on it before a unilateral surprise action was taken changing the petitioner's shelter category in the face of written verification provided by the petitioner to the contrary.

FOOTNOTES

¹The hearing was subsequently delayed for one month at the petitioner's request.

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